

The Gazette of India



EXTRAORDINARY PART II—Section 3 PUBLISHED BY AUTHORITY

o. 91] NEW DELHI, TUESDAY, APRIL 21, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 14th April 1953

S. R. O. 739.—WHEREAS the election of Shri Tara Chand, as a member of [the Legislative Assembly of the State of Uttar Pradesh from the Sidhauri West Constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Hanuman Prasad Misra, son of Shri Madho Ram Misra, Village Kansa, P. O. Mahmud abad, Tehsil Sidhauri ;

AND WHEREAS the Tribunal appointed by the Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in the section 103 of the said Act, sent a copy of its Order to the Election Commission ;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT FAIZABAD

PRESENT : Sri D. N. Roy—*Chairman.*
Sri A. Sanayal—*Member.*
Sri M. U. Faruqi—*Member.*

ELECTION PETITION No. 272 OF 1952

Sri Hanuman Prasad Misra—*Petitioner.*

Versus

1. Sri Tara Chand.
2. „ Ayodhya.
3. „ Kundan Lal.
4. „ Nand Kishore.
5. „ Baiju Ram.
6. „ Madho Prasad Misra.
7. „ Ragho Ram.
8. „ Lalta Prasad.
9. „ Lallu Ram.
10. „ Vidya Swarup.
11. „ Sahdeo Ram Shukla.
12. „ Sheo Kumar Singh.
13. „ Prahlad Singh.

14. Sm. Udma Devi.
15. Sri Kamleshwar Dayal.
16. „ Iftikhar Alam.
17. „ Ramadhin.
18. „ Siddh Prasad.
19. „ Suraj Ball.—*Respondents.*

JUDGMENT

BY THE CHAIRMAN AND BY SRI A. SANYAL, MEMBER.

This is an election petition filed by Sri Hanuman Prasad Misra, who was one of the duly nominated candidates for election to the Legislative Assembly of U. P. for Sidhault West Constituency for the general election held in 1951-52. This is a double-member Constituency from which Sri Tara Chand, Respondent No. 1, was elected to the general seat and Sri Baiju Ram, Respondent No. 5 was elected to the other seat reserved for the scheduled caste. The remaining respondents were duly nominated candidates to the same election inclusive of Sri Lalloo Ram, Respondent No. 9, who was for the reserved seat.

The election has been challenged on a variety of grounds. It has been contended that the nomination paper of Respondent No. 1 had been improperly accepted at the time of the scrutiny under section 36 of the Representation of the People Act 1951 inasmuch as Respondent No. 1 at the time of the nomination and scrutiny was disqualified under section 7 (d) of the Representation of the People Act, because he had shared an interest in the contract of supply of goods and for the execution of works and performance of service to the Government of Uttar Pradesh. It was contended in paragraph 12 of the petition that the wrongful inclusion of the name of opposite party No. 1 in the list of the validly nominated candidates had materially affected the result of the election. In the election petition, the petitioner set out a number of grounds of illegalities and irregularities, which according to him affected materially the result of the election. Some of these grounds were examined by this Tribunal and were found wanting in particulars and were therefore scored out. The other grounds which were not so wanting were allowed to remain. It was prayed by the petitioner that the election of opposite party No. 1 be set aside and declared null and void and illegal. It was further prayed that the petitioner be declared elected to the general seat of this Constituency in place of opposite party No. 1.

The respondents were duly served, but only Respondent No. 1, *viz.*, Sri Tara Chand and Respondent No. 7, *viz.*, Sri Raghoram entered appearance and filed their written statements. The allegations made by the petitioner were traversed by Respondent No. 1. He *inter alia* contended that on the date of his nomination or at the time of scrutiny, he was not hit by the provisions of section 7 (d) of the Representation of the People Act. He submitted that neither by himself nor by any person or body of persons interested for himself, or for his benefit, or on his account, he had any share or interest in a contract for the supply of goods to the State Government within the meaning of clause (d) of Section 7 of the Representation of the People Act. It would not be necessary for us to notice here the pleadings in greater detail because these pleadings will be considered at proper place in subsequent discussion in this order. Respondent No. 7 lent support to Respondent No. 1. The pleadings of the parties gave rise to the following issues :—

- (1) Is the petition liable to be rejected for want of proper verification?
- (2) Is the petition liable to be rejected for non-compliance with the provisions of sections 83(2) and 117 of the Representation of the People Act?
- (3) Are the allegations of corrupt and illegal practices in paras. 27 to 33 vague and indefinite and should not be entertained for that reason?
- (4) Can the allegations of corrupt and illegal practices in paras. 27 to 33 entertained in the absence of a list of such practices and in the absence of proper verification of such list as required by section 83(2) of the Act?
- (5) Is the petitioner entitled to the relief claimed by him in view of his plea that the nomination of the opposite party No. 1 was wrongly accepted by the Returning Officer and in view of Baiju Ram's election not having been questioned and having become final?
- (6) Was the Respondent No. 1 disqualified from being chosen as a member of the U. P. Legislative Assembly as alleged in paras. 11 to 18 of the petition?
- (7) Was the nomination paper of the Respondent No. 1 invalid for the alleged reason that he had not appointed any election agent previous to the filing of his nomination paper as contemplated by section 40 of the Act?
- (8) Are the allegations contained in paras. 20 to 26, 27 (ii), (iii), (iv), (ix), (x) and 34 to 36 true, and, if so, was the result of the election materially affected by such facts or by any of them?

(9) Are the allegations relating to corrupt and illegal practices contained in para. 27 (ii) (iii), (iv), (ix), (x) true, and if so, what is, its effect ?

(10) To what relief, if any, is the petitioner entitled ?

The preliminary issues Nos. 1, 2, 3, 4 and 7 were heard by us. The findings on these issues were given on 17th January, 1953. These findings form part of Annexure 'A' of this order.

We have now to deal with the other issues formulated above.

Issue No. 5 covers the question as to whether the petitioner is entitled to the relief claimed by him in view of his plea that the nomination of the opposite party No. 1 was wrongly accepted by the Returning Officer and in view of Baiju Ram's election not having been questioned and having become final. This issue is to be considered along with Issue No. 6 which is to the effect that whether Respondent No. 1 was disqualified from being chosen as a member of the U. P. Legislative Assembly as alleged in paragraphs 11 to 18 of the petition. In this connection, certain facts which are now more or less admitted have to be stated.

Sri Tara Chand Respondent No. 1 has been a partner in firm Lachhmi Narain Chunni Lal of Sidhauri, which is a registered firm. This firm came into existence in its present form on the 1 of March, 1944 under the deed of partnership Ex. A. 12 executed by the different partners including Sri Tara Chand. At Sidhauri, there came into existence in 1938, an association known as "Merchants Association Sidhauri" or "Beopar Mandal Sidhauri". It is an unregistered body, and as the evidence adduced by both the parties in this case goes to show, its membership was not regulated by any well-defined rules or principles. Its membership was open to such merchants dealing in cloth, *Gur* and grain as used to perform, in the parlance of these witnesses, "*Bachna Ka Pujan*". It was no doubt a loosely-knit association as has been contended on behalf of Respondent No. 1. The partners of the firm "Lachhmi Narain Chunni Lal" were members of the Merchants Association, Sidhauri, and they made use of their firm's name in joining it as such. In 1946-47, the Government of Uttar Pradesh in furtherance of the obligation taken by it for supplying grain to the public started a "levy scheme" or "procurement scheme" at Sitapur. For that purpose, some of the grain merchants at Sitapur and Sidhauri obtained "B" class licence from the Government. A similar licence was obtained by the Merchants Association Sidhauri. This particular licence which is Ex. D. W. 1/10 described the name of the licensee as "Tara Chand Maheshwari, President, for Merchants Association Sidhauri" as the licensee. And in the column of parentage, the name of "Lala Lachhmi Narain" was specified. The merchants supplied grain to the Government under this scheme through the Merchants Association Sidhauri. The firms, inclusive of firm Lachhmi Narain Chunni Lal had each to contribute a sum of Rs. 280 which had been deposited with the Government as security. Sri Lachhmi Narain Sharma D. W. 1 has been the Secretary of the Merchants Association. Firm "Nirmal Kumar Santosh Kumar" was appointed as the working agent of this association. They used to acquire grain from different constituent firms and to make up accounts of collection. Amounts paid by the Government were deposited with the Bank, and they were distributed and paid by cheques drawn by Sri Tara Chand, Respondent No. 1, who was the President of the Association, jointly with the Secretary of the Association. The Government used to pay a commission of Rs. 1/4/- per cent. over this procurement. Part of it went to the working agent and the balance was distributed amongst the members of the Beopar Mandal, who supplied the grain. These facts are proved by the evidence of the Secretary of the Beopar Mandal and by the other witnesses produced in the case. It may be stated here that firm Lachhmi Narain Chunni Lal also held a licence in form B, which is in the same manner as the licence Ex. D. W. 1/10 held for the Merchants Association as stated above. The licence held by firm "Lachhmi Narain Chunni Lal" has not yet been surrendered. It has further been stated by Sri Tara Chand Respondent No. 1 that firm "Lachhmi Narain Chunni Lal" is still doing business under terms of the deed of partnership, Ex. A. 12. In his cross-examination, he stated that firm "Lachhmi Narain Chunni Lal" are still 'B' class licensees and they never surrendered their licence and that even after the resignations (which will hereinafter be examined), this firm did purchase gram, wheat and barley under the terms of the licence. What happened in this particular case was this. Sri Tara Chand Respondent on or about 21st of November, 1951 perceived that he was likely to be hit by the provisions of section 7(d) of the Representation of the People Act. In order, therefore, to get rid of the disqualification, he made the application Ex. D. W. 1/2 on the 21st of November, 1951, addressed to the Secretary of the Merchants Association Sidhauri, saying that he was resigning from the Presidency of the Association and that his resignation be accepted. It may here be stated that the presidency is an honorary office. On the 22nd of November, 1951, firm "Lachhmi Narain Chunni Lal" made a petition Ex. D. W. 1/3 addressed to the Secretary Merchants Association on saying that the firm was resigning from the membership of the Association and as such the firm would not be able to sell grain to the Association. These two letters were placed before the meeting of the Merchants Association on the 22nd of November, 1951. The proceedings book of the Association show that the resignation of Sri Tara Chand from the office of presidency was accepted, but he was requested to sign cheques till such time as a fresh President was not elected; and this was with a view to enable the *Beoparis* to receive payment of their dues. By

another resolution of the same date, the Association accepted the resignation of firm "Lachhmi Narain Chunnai Lal". We may here quote the exact resolutions in order to bear out their true import :

"Yeh Committee Sri Tara Chand Ji Maheshwari ke tyagpatra par bichar karney ke bad is nirnai par pahunchi ke Sri Tara Chand Ji ka Sabhapati pad se tyagpatra sakhe sukar kiya jata hai aur koi navin sabhapati ke liye bichar kiya gaya ke iske waste bhawishya men Shigrahi baithak bolai jaway, jab tak Sri Tara Chand Ji se pararthana ki gai ke who keval Bank ke cheque par hastakshar ka karya ker terahen jab tak Bank men dosri bewashthe hastaksharon ki na ho jawe take.....beopariyon ko rupya milne men asubidha na hone pawe."

- (2) Sri Lakshmi Narain Chunnai Lal, ka tyagpatra baithak men pesh kiya gaya ke way gala kharid kar Association ko na den saken gay aur aj se na uske member hi rah saken gay. Tyagpatra bichar hua aur sarvasammati se yeh tai hua ke unka istifa mansoor kar liya jawe aur woh sukrit kiya gaya".

The Marketing Inspector Sidhault and the Regional Food Controller, Lucknow, were informed of these proceedings. On 4th July, 1951, another meeting of the Merchants Association was held in which Sri Pramsukh Jain was unanimously elected as the President. Thereupon the Merchants Association informed their Bankers, the Central Bank of India, Ltd., Sitapur of this change, obviously with a view to tell them that the bank account will be operated upon by the new President jointly with the Secretary. Meanwhile, between the 27th of November, 1951 and the 4th of December, 1951, certain cheques were drawn up by Sri Tara Chand as President, jointly with Sri Lakshmi Narain Sharma as Secretary of the Merchants Association. Four of such cheques have been produced before us. They are Exs. P. W. 1/1 to P. W. 1/4. By these cheques, payments were made to the grain merchants, towards this "procurement" or "levy scheme" by the Association. Two of these cheques viz., cheque Ex. P. W. 1/1 dated 25th November, 1951 for Rs. 6,896/14/9 and cheque Ex. P. W. 1/4, dated 3rd December, 1951 for Rs. 1,584/14/6 were in favour of firm "Lachhmi Narain Chunnai Lal" of which Sri Tara Chand Respondent is a partner. Payment under these cheques have been received by this firm.

It has been contended on behalf of the petitioner that these resignations were unreal and were intended to make a pretence of formal resignation. We do not agree with this contention and we are of opinion that Sri Tara Chand knew that he was likely to be hit by the provisions of section 7(d) of the Representation of the People Act unless he shook himself of the liabilities which brought him within the four corners of the provisions of that section. The question before us would, therefore, be whether on facts stated above and proved by the witnesses Sri Tara Chand can be regarded to have succeeded in getting rid of the disqualifications by the passing of the resolutions and by the acts mentioned above. In this connection, it has been argued before us that a firm is not a juristic person and that a firm could not enter into partnership with another firm or association. It has further been argued that the transaction aforesaid was only a unilateral agreement, and not a bilateral contract. It is true that a firm is not a juristic person and as such it cannot enter into a partnership with another. See *Sheodoyal Khemka Vs. Joharmull Marmull* (I. L. R. 50 Calcutta 549); *Brojo Lal Sahu Vs. Budhnath Pyari Lal* (A. I. R. 1928 Calcutta 148); *Ram Das Vs. Ram Babu* (158 Indian Cases 25); in the matter of *Jai Dayal Madan Gopal* (I. L. R. 54 Allahabad 846). But there is nothing to prevent the partners of the firm as individuals from being brought in as partners in another firm by the use of their firm's name. The name under which a firm carries on business is, in point of law, a conventional name applicable only to the persons who on each particular occasion when the name is used are members of the firm. This view is supported by a decision of the Madras High Court in *K. T. M. Muhammad Abdul Latiff Routhier Vs. S. M. S. Sheikh Ismail Routhier* (A. I. R. 1934 Madras 9) and by two other decisions, the one of the Calcutta High Court in *Kadir Bux Omer Hayat Vs. Bakht Behari* (A. I. R. 1932 Calcutta 768), and the other of the Allahabad High Court in *first Brij Kishore Ram Swaroop Vs. Sheo Charan Lal* (A. I. R. 1938 Allahabad 69). In all these cases the view taken has been that a firm is not a legal entity and there cannot be a partnership of firms, but when two firms combine, the legal effect is that the individuals in the two firms become partners.

Appended to the petition, there are two Annexures specified as Part 'A' and 'B'. Part 'A' is a "form of application for agency," and part 'B' is described as an "agreement" entered into by the promisor with the State Government of Uttar Pradesh. These two forms were admittedly used at the time of obtaining the licence in form 'B' by the Merchants Association. That fact is stated in the petition and admitted in the written statement. It has been contended 'on behalf of the respondent that if these documents are examined in their true perspective it would appear that the form is only an "agreement" and not a "contract", and it has been urged that there is absence of mutuality and that the obligation is only onesided. It has further been urged that whether we call it an "agreement" or a "contract" it was not with the Government and it was not executed by the Government so as to fulfil the conditions of Article 299 of the Constitution of India and Section 175 sub-section (3) of the Government of India Act, 1935. In order to consider these questions, we have first to state the provisions of section 7(d) of the Representation of the People Act, 1951. That section says that a person shall be disqualified

from being chosen as, and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State, if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any service undertaken by, the appropriate Government.

These provisions, so far as it is necessary for this case, can be split into three ingredients ;

- (1) The candidate must have a share or interest in a contract,
- (2) The contract must be for the purpose of supplying goods to, or for the performance of any services undertaken by the Government, and
- (3) The Government in question must be the appropriate Government, which has been defined in section 9 of the Act, which, in the present case, is the State Government of Uttar Pradesh.

The petitioner has to make out that all the three ingredients are satisfied in the case of the respondent in order to bring him within the scope of the disqualification. There was no contest before us that the word "contract" used in section 7(d) has been used to govern all the clauses, inclusive of the clause "performance of any service", which is the last of the three clauses in the series in this sub-section ; and this view has been upheld by the decision of other Tribunals. We may quote here the decision of the Vellore Tribunal in Election Petition No. 109 of 1952, *Sri Kannabiran versus Sri A. G. Arunachalan* (published on the 17th of December, 1952 in the Gazette of India Extraordinary).

The first point to be determined is whether there was a contract between Respondent No. 1 and the State Government of Uttar Pradesh. Section 7(d) of the Representation of the People Act does not say that the contract must be *with* the Government. What it says is that "there should be a contract for the supply of goods to, or for the execution of any works or the performance of any service undertaken by the appropriate Government". In the present case, it is conceded that there is no contract *with* the Government. Consequently the decisions in *K. Perumal Mudaliar Vs. Province of Madras* (A. I. R. 1950 Madras 194) ; *Debi Prasad Sri Krishna Prasad, Ltd., Vs. Secretary of State* (A. I. R. 1947 Allahabad 377) ; 51 C.W.N. 753 ; 84 C. L. J. 275 ; and A. I. R. 1947 Federal Court 38 ; and the provisions of section 175(3) Government of India Act 1935 which bear upon the question as to how contracts with Government should be made in order to have a binding effect need not be noticed or discussed by us.

Coming to the facts of the present case, we have to deal with the case of a Merchants Association which applied for licence in Annexure 'A' and 'B' appended to the petition and which obtained the licence from the Controller of the Government in the "procurement" and "Levy Schemes" of controlled food grains. Annexures 'A' and 'B' appended to the petition show that the licence was applied for and granted by the proper authority (in this case the Controller), and the terms and the conditions which were accepted by the promiser, and detailed in Annexure 'B' contained mutuality as well. Annexure 'B' *inter alia* stated that the promiser undertakes to buy, store and deliver to the State Government controlled foodgrains of such specification as may be prescribed by the Regional Food Controller of the Region concerned in accordance with the terms of this agreement and not to transfer such grain to any other person or persons except in accordance with such agreement as may be entered into between "the promiser" and "the Controller". It also provided that all controlled foodgrains delivered as aforesaid shall be paid after they have been tested and passed in accordance with the direction of the Controller at a price calculated and fixed by the State Government, plus commission, if any, at the rates fixed by the State Government and also the actual cost of the gunny bags supplied by the promiser. It further provided that the agreement shall be determinable at any time by mutual agreement of by the State Government giving one month's notice to the promiser, in which case the State Government shall take delivery of all the controlled foodgrains in possession of the promiser. It further provided that the promiser shall deposit with the Controller such amount as may be demanded from him by the Controller as security for the due performance by him of the terms of this agreement. There can therefore be no doubt that there was mutuality of obligation, and not a one-sided agreement. The mutuality provides a clause of penalty by forfeiture besides a remedy, and a clause about the termination of the agreement by mutual consent, and valuable considerations passed for the agreement. The agreement is to be viewed only as a contract as known to law and not as a pure licence. The essential feature of a licence *viz.*, the absence of mutuality and the one-sidedness being absent in this case.

We have in this connection also to consider whether there has been in this case a "service undertaken" as defined in section 7 (d) of the Representation of the People Act and whether such an undertaking was by the State Government. The State Government has taken an essential service for the equitable distribution of controlled foodgrains at a reasonable price. The "procurement scheme" and the "levy scheme" were introduced as an integral part in the scheme of distribution of controlled foodgrains at a fair price to consumers and licensed dealers ; and there can be no doubt whatsoever that the scheme formed a "service undertaken" by the Government in the interest of the community. During periods of acute shortage of essential goods and commodities, it is not only desirable but also imperative that the state should take steps to regulate their purchase and sale with a view to equitable distribution amongst all consumers.

It would be unnecessary for us to quote English and Indian decisions bearing upon the general policy implying for providing for disqualification stated under clause 7 (d) of the Act against persons chosen for membership of democratic legislative bodies. The decisions have a value for the light they throw upon the policy with which democracy guards the freedom and independence of its elected representatives. No person should be elected if there will be a likelihood of a conflict between his duty and interest. Another principle which we have to observe with the disqualification clause in an enactment is that it should be strictly construed because it is penal in nature. In the light of these principles, and in the light of the facts stated above, and also in the light of what has been stated by Sri Lakshmi Narain (D.W.1) and Sri Tara Chand Respondent to the effect that the security deposit with the Government has not yet been taken back, that final accounts have not yet been settled with Government because the question of "refraction" has not yet been made up, that after the resignation of Sri Tara Chand as President from the Merchants Association and the resignation of firm Lachhmi Narain Chunni Lal from membership of the Merchants Association, this firm has accepted payment after the nomination and scrutiny in relation to transactions made with the Government prior to the date of nomination, and that firm Lachhmi Narain Chunni Lal are still 'B' Class licensees and they never surrendered their licence after the resignation, the only conclusion to which we are driven is that at all relevant times Respondent No. 1 had interest in a contract for the supply of goods to, and for the performance of a service undertaken by, the U. P. Government and he was thereby disqualified under section 7 (d) from being chosen as a member of the State Legislature and that the acceptance of his nomination by the Returning Officer was improper. It is true that in his own way Sri Tara Chand did all that he thought was necessary for him to do to rid himself of the disqualification. But in our opinion, he could not succeed and in law he failed to rid himself of the disqualification on account of reasons stated above.

We may in this connection refer in passing to the provisions of section 63 of the Indian Contract Act which entitles a promisor to dispense with or remit wholly or any part the performance of the terms made to him. In this case, with regard to the money payable to the first respondent or to firm "Lachhmi Narain Chunni Lal" by the Government, the first respondent would be in the position of a promisee and the Government in the position of a promisor. The first respondent did not relinquish the payment of money that was due from the Government on the material dates. In fact, as we have already stated above, payment was received after the nomination and its scrutiny. And as has been stated by Sri Lakshmi Narain Sharma, Secretary of the Merchants Association, who is one of the witnesses for the respondent, the account with the Government had not been finally settled even on 11-2-53 when the said witness was examined. A contract terminates by its discharge. And, in this case, as the accounts had not been settled and money was due to firm "Lachhmi Narain Chunni Lal", the contract was not discharged and was still subsisting when the nomination of Respondent No. 1 took place. In this connection, we may refer to the decision in *Satyendra Kumar Das Vs. The Chairman and the Municipal Commissioners of Dacca* (I.L.R. 58 Calcutta 180). In that case, the plaintiffs sued for a declaration that they were qualified to be elected Commissioners of Dacca Municipality. Their father's firm had supplied road material to the Municipality. Their bills for the materials supplied were passed by the Chairman but remained unpaid at the date when nomination papers were sent in. It was held that the contract had not terminated and the plaintiffs were interested in it and consequently were disqualified from being elected. The *ratio decidendi* of that case is that when payment is outstanding to the contractor, he must be considered to be interested in the contract. Here in the present case, we have the additional factor that Sri Tara Chand did not relinquish his claim due from the Government at the time when nomination was made, or the scrutiny was held. We may here reiterate that the accounts with the Government have not yet been settled.

It has been alleged by the petitioner that Respondent No. 1 has also a share in the contract for the supply of foodgrains from Kamalpur Mandi in the District of Sitapur, which has been entered into between firm "Sabtadin Ram Prasad" of Kamalpur and the Government of Uttar Pradesh; and evidence has been given in the statement of the petitioner to the effect that Respondent No. 1 and firm "Lachhmi Narain Chunni Lal" are partners of firm "Sabtadin Ram Prasad". The evidence of the petitioner on this point, according to himself, is hearsay. The petitioner admitted that he did not raise any objection in this behalf before the Returning Officer. On the other hand there is the evidence of Respondent No. 1 and also of Ram Prasad (D.W.5), a partner of firm "Sabtadin Ram Prasad", who proved conclusively that neither Respondent No. 1 nor firm "Lachhmi Narain Chunni Lal" is a partner of firm "Sabtadin Ram Prasad", nor did they share with them in any contract for the supply of foodgrains to the Government from Kamalpur Mandi. We believe Respondent No. 1 and Ram Prasad witness on this point and hold accordingly.

Having come to the conclusion that Respondent No. 1 was hit by the provisions of section 7 (d) of the Representation of the People Act, 1951, and was disqualified from being chosen on the date of the nomination as a member of the Legislative Assembly we have to examine the question as to what would be the effect of the wrongful acceptance of his nomination paper by the Returning Officer on the election, specially in view of Baiju Ram's election to the reserved seat. On this point, it has been argued that since Baiju Ram's election has not been "directly" challenged by the petitioner and since no relief has been claimed against Baiju Ram, Baiju Ram's election must be

taken as final, and consequently the election of Respondent No. 1 cannot now be assailed "*because the election is one and indivisible*." It has further been argued that having regard to the provisions of section 84 of the Representation of People Act, which deals with the reliefs claimable by a petitioner, it was not permissible for the petitioner to claim more than one relief out of the three reliefs enumerated therein. Section 84 of the Representation of People Act reads as under :—

" 84. RELIEF THAT MAY BE CLAIMED BY THE PETITIONER

A petitioner may claim any one of the following declarations :—

- (a) that the election of the returned candidate is void ;
- (b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected ;
- (c) that the election is wholly void."

This being the position, we have to see what is the relief which has been claimed in the petition and what should have been the relief upon the alleged facts and upon the proved circumstances of the case. The relief that has been claimed in the petition is that the election of the returned candidate *viz.*, Respondent No. 1, is void and illegal and that the petitioner should be declared as duly elected to the general seat. The relief claimed, although split up into two in the petition, would, in a sense, come within clause (b) of section 84 of the Representation of the People Act. We may now quote the provisions of section 98 of the Representation of the People Act :—

" 98. DECISION OF THE TRIBUNAL.—At the conclusion of an election petition the Tribunal shall make an order —

- (a) dismissing the election petition ; or
- (b) declaring the election of the returned candidate to be void ; or
- (c) declaring the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected ; or
- (d) declaring the election to be wholly void."

From this section, it would follow that at the conclusion of a trial of an election petition, the Tribunal shall make an order referred to in clauses (a) to (d) of the section. The section does not lay an impediment on the Tribunals granting such relief as may be just and proper on the facts and circumstances proved in the case.

Section 36 of the Representation of the People Act, 1951 deals with the scrutiny of nominations by the Returning Officer. It *inter-alia* lays down that if upon examination of the nomination papers and upon the hearing of all objections which may be made to the nominations, the Returning Officer comes to the conclusion that any candidate is disqualified for being chosen to fill the seat under the Act, he shall reject the nomination. It has been urged on behalf of the Respondent that the relief claimed in the petition being one for a declaration that the election of Respondent No. 1 be held null and void and illegal and be set aside, and that the petitioner be declared elected to the general seat in place of Respondent No. 1 such a relief cannot be entertained in view of the provisions of section 100 and section 101 of the Representation of People Act, 1951 upon the facts stated in the petition. His contention is that the grounds of improper acceptance of nomination paper cannot be entertained for granting this relief by virtue of the provisions of section 100 and section 101 of the Act. He maintained that the scheme of the Act is to classify the election petitions under three categories according to the reliefs which are open to a petitioner under section 84 (which can be granted or refused by the Tribunal under section 98 of the Act), and also to classify the grounds on which election petitions can be based [detailed in sub-sections (1) and (2) of section 100 and section 101], and to relate the grounds to the relief. The grounds as well as the relief were contended to be mutually exclusive. In other words, the argument is that the relief under section 84 (a) is related to the grounds in sub-section (2) of section 100, the relief under section 84 (c) to the grounds in sub-section (1) of section 100 and the relief under section 84 (b) to the grounds in section 101 ; and the relief under section 84 (b) which has been claimed by the petitioner may be granted if the grounds under section 101 have been made out. It has further been urged that since under section 84 of the Representation of the People Act only one relief enunciated under that section can be claimed, and since the reliefs which have been claimed in the petition have been split up into two, there is a breach of the provisions of the Act ; that if the petitioner were to claim relief (c) of section 84 of the Representation of People Act, 1951 Baijram's election should have been "frontally" attacked and not "incidentally" ; and that Baiju Ram has been, more or less, made a *proforma* party and therefore he has not come forward to contest the election. In other words, it has been contended that since the "*whole of the election*" has not been sought to be declared void and since Baiju Ram's election is not sought to be set aside, Baiju Ram's election must be taken as final, and the petitioner cannot claim declaration in favour of himself in respect of the general seat. In this connection it has further been argued that under section 100 of the Representation of the People Act, it is on the grounds contained in the section that the election can be declared wholly void and that if we enter into those grounds and embarked upon a determination of the question whether the nomination of Respondent No. 1 was improperly accepted, it could be for the purpose of deciding *only* whether the election was "wholly void" within the meaning of

section 100 (1) (c) of the Representation of the People Act 1951, and for no other purpose and that, therefore, the investigation of that question *viz.*, an improper acceptance of nomination does not come within section 100 sub-clause (2) or (3), or section 101 of the Act. On this ground, it has been finally urged that the order of the Returning Officer accepting the nomination of Respondent No. 1 must be taken as final and cannot be questioned before the Tribunal. And we have been asked to reject the petition on the ground that proper relief has not been claimed and that we are debarred from granting relief under section 100 (1) (c) or under section 101 of the Representation of the People Act.

Before proceeding to examine these contentions on merits, we may refer to paragraph 12 of the petition where it has been specifically stated that the wrongful inclusion of the name of opposite party No. 1 in the list of validly nominated candidates has materially affected the result of "the election". This averment to our mind covers completely the question that the whole of the election have been materially affected. The use of the words "the election" cannot be interpreted to cover only the "general seat" and to make the election divisible into two separate water-tight compartments, one for the general seat and the other for the reserved seat. In fact the argument which has been advanced on behalf of Respondent No. 1 is that the election is *indivisible*. In Election Petition No. 4 of 1952, Jagannath Vs. Achwal Pandurang and others, (Gazette of India Extraordinary, Part II, Section 3, dated 24th February 1953, page 509), the Election Tribunal of Jabalpur dealt with a case where the Constituency was a double seated Constituency covering a general seat and another a reserved seat for the scheduled caste. There the Tribunal in construing the words of section 100 (1) (c) held that the election so far as it relates to the reserved seat will also be affected by the improper rejection of the nomination relating to the general seat because the election relating to the two seats was *one indivisible election*, and not two separate elections held simultaneously for the purpose of convenience. The reasoning that was put in support of that conclusion was this. Under section 63 of the Representation of the People Act, the voters in the Constituency are under the Rules allowed two votes, each, with the option of casting these votes for any of the candidates irrespective of the fact whether he does or does not belong to the scheduled caste, the only condition being that not more than one vote could be cast in favour of one candidate; and therefore it was clear that any one of the voters who casts his vote in that case for the candidate for the reserved seat might have cast the same vote for any other candidate had his nomination not been rejected, and it was of course, impossible to discover who may or who may not have voted for the candidate to the reserved seat if the candidate whose nomination had been rejected had been in the field. The same considerations would, *pari passu*, be applicable to the case on a wrongful acceptance, more specially in the present case, as we shall presently show. But before we do so, we would also refer to the provisions of section 55 of the Representation of the People Act 1951. Under that section, a member of the scheduled caste is not disqualified to hold a general seat. This shows that Sri Baiju Ram, Respondent No. 5 and Sri Lallu Ram Respondent No. 7, who had filed their nominations relating to the reserved seat were also contesting the election to the general seat. In a double-member Constituency when two of the candidates of the scheduled caste top the polls, they carryaway both the seats—the general and the reserved. All these facts go to show that the election to the general seat and that to the reserved seat are not two separate elections but one indivisible election in which candidates of the scheduled castes are also contesting for the election to the general seat. It was one entire indivisible election. As has been held in the Jabalpur case cited above, the only meaning that can be put upon the words "the election" used in section 100 (1) (c) would be "the election to both the seats in the Constituency". The words "the election" in paragraph 12 of the petition must therefore be construed as meaning the whole of the election covering both the seats in the Constituency.

Similar view was taken on this question in the following cases :—

- (1) Election Petition No. 104 of 1952—Niranjansingh Vs. Brijbhansingh before the Election Tribunal, Patiala.
- (2) Election Petition No. 3 of Surajbhan Vs. Hemchand before the Election Tribunal Delhi.
- (3) Election Petition No. 33 of 1952—C. K. Ramchandram, Nair Vs. Ramchandradas before the Election Tribunal, Quilon.
- (4) Election Petition No. 1 of 1952—Vijaya Mohan Reddy Vs. Paga Pulla Reddy before the Election Tribunal Secunderabad; and
- (5) Election Petition No. 19 of 1952—Nagi Bhai Vs. Mithabhai before the Election Tribunal, Baroda, Bombay.

All these cases were relied upon and noticed at page 516 in the Jabalpur case cited above. The reasoning adopted in every case was the same *viz.*, that the election to the two seats—one for the general and the other for reserved—was one indivisible election and therefore the improper rejection of a nomination paper relating to either of these two seats affects the entire election.

The question which we have to consider is whether in the case of improper acceptance of a nomination paper the same result would follow. In our opinion, there would be no difference

between the result. We can illustrate this upon the facts and circumstances of the present case. In this case the votes secured by the candidates were these (*Vide Ex. A2*) :

	Votes
Sri Tara Chand, Respondent No. 1	26,275
Sri Baiju Ram, Respondent No. 5 (Scheduled Caste)	25,133
Sri Laloo Ram, Respondent No. 9 (Scheduled Caste)	11,938
Sri Hanuman Prasad, Petitioner	8,973
Sri Raghoram, Respondent No. 7	8,002

If, therefore, the nomination paper of Sri Tara Chand was wrongly accepted and the votes cast in his favour were to go to the other candidates who were in the field, it may just be that either Sri Hanuman Prasad Misra, or Sri Lallu Ram, or, for the matter of that, even Sri Raghuram might have been elected to the general seat. It would of course be a matter of speculation as to whom those 26,275 votes would have gone if Sri Tara Chand were not in the field. But even whether it had gone to one or to more than one candidate, and in any proportion, the result of the election would have been absolutely different, and consequently the result of the election has been materially affected by the wrongful acceptance of the nomination of Sri Tara Chand. We may in this connection refer again to section 100(1)(c) of the Representation of the People Act. It says that if the Tribunal is of opinion that the result of the election has been materially affected by the improper acceptance or rejection of any nomination paper, the Tribunal shall declare the election to be wholly void. The plain meaning of this clause is that before an improper acceptance or rejection of any nomination paper can be a ground for setting aside an election, the Tribunal must form an opinion that in fact the result of the election has been materially affected, and not merely that it is likely to have been materially affected. In our opinion, under the facts and circumstances of the present case, there can be no two opinions that the result of the election has been materially affected by the improper acceptance of the nomination of Sri Tara Chand.

The question next arises whether, in view of the failure of the petitioner *specifically* to claim any relief against Sri Baiju Ram, it would entail a dismissal of the petition when it has been found that the improper acceptance of the nomination of Sri Tara Chand has materially affected the result of "the election". We have already referred to paragraph 12 of the petition on this question. That paragraph has all the elements of a valid prayer for a declaration that the election is wholly void, a relief falling under section 84 (c). If the relief as formulated in the petition be taken as restrictive of the relief which can be claimed under section 84(c), a even then the Tribunal is not debarred from granting the proper relief which justice and the circumstances of the case require. This construction of the petition which tends to harmonise two different parts of the petition and to give each part its full meaning and implication is, we think, more justified than one which either excludes one of them, or reads it as subservient to the other, without any warrant to do so. A similar question was considered by the Election Tribunal, Quilon in Election Petition No. 33 of 1952 in Sri C. K. Ramchandram Nair *Vs.* Sri Ramchandra Das and others (Gazette of India Extraordinary, Part I Section 1, dated November 17, 1952, page 2396a). There it had been laid down that a contravention of section 84 of the Act in the matter of claiming relief cannot entail a dismissal of the petition, which can only happen under section 90(4) of the Act for other infractions of the law specified in that section. We may here advert to the provisions of section 98 of the Representation of the People Act which says, with regard to the decision of the Tribunal, *that at the conclusion of the trial of an election petition*, the Tribunal shall make an order (a) dismissing the election petition; or (b) declaring the election of the returned candidate to be void; or (c) declaring the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected; or (d) declaring the election to be wholly void.

The relief that can be granted is conditioned only by the grounds alleged and proved to exist. The reliefs are not a part of the pleadings unlike in a civil case in which the suitor seeking relief individually against his opponent, is the most competent person to decide what he wants and what he does not want. It ought not to be open to a petitioner in an election petition to conclude his Constituency or to tie the hands of the Tribunal by moulding his prayer in a manner as may best conduce to his private ends, whatever be the grounds on which he bases his claim. The question was again specifically considered in the Quilon case stated above; and at page 2396j of the decision, the conclusion was very clearly laid down in the following words :

"The above we think, is the true intendment of the language employed in Sections 100 and 101 of the Act. In this view, granting a minor relief when a major one is asked for, or refusing to grant a major when only a minor one is sought, a principle which commonly arises in the disposal of civil suits, has no analogy with the award of reliefs in an election petition, which is governed solely by the statute of which it is a creature".

We, therefore, come to the conclusion that whether sub-sections (1) and (2) of section 100 and section 101 are mutually exclusive or not, and whatever be the scope of the prayer made, or the relief claimed in the election petition, the relief which the Tribunal can and is bound to grant must depend on grounds which it finds to exist.

In the Jabalpur case of Jagannath Vs. Achwal Pandurang (Gazette of India Extraordinary Part II Section 3 dated 24th February, 1953 page 509 at page 519), it was observed that although Respondent No. 13 was elected to the general seat and Respondent No. 18 was elected to the other seat reserved for the scheduled castes and although in the election petition no allegation was made against Respondent No. 18 (scheduled caste), the election was to be declared wholly void as a result of the provisions of law enunciated above and the Tribunal cannot withhold that conclusion and cannot in any way mitigate the hardship which comes to the candidate against whom no specific allegation is made. We may quote another passage bearing upon this question from the decision of the Election Tribunal Secunderabad, Decan, in Election Petition No. 1 of 1952, Vijaya Mohan Reddy Vs. Paga Pulla Reddy and others (Gazette of India Extraordinary Part II Section 3, dated January 8, 1953 at page 53):—

"It has also been urged before us by Mr. Subbaryayudu pleader of the respondent No. 1, that we are not competent to declare the whole election void firstly because the petitioner does not pray for it, and secondly because the wording of the Notification of the Election Commission appointing as members of the Tribunal is such that it does not confer such powers on us. So far as election petition is concerned, the words in the prayer of the petitioner that we may declare 'that the election to which the respondent No. 1 has been returned is wholly void,' do not support this contention. Declaring an election wholly void does not mean avoiding the election only of respondent No. 1. With regard to terms of reference contained in the Notification we do not think that they confine us to this limited scope as alleged by the respondent. *It is inconceivable that a petition in which the ground for wholly avoiding elections are set out, should be referred to us, and the powers to pass the order necessary on the success of the petition should be withheld.* We are unable to give this narrow interpretation to the wording of the Notification suggested by the pleader of the respondent. The very reference for trial of this petition in our opinion, by implications confers on us powers to pass any order that is necessary under the provisions of the Act, which we may be called upon to pass as a result of the trial of the petition".

To sum up, therefore, our conclusion on issues Nos. 5 and 6 are these. Sri Tara Chand, Respondent No. 1 was disqualified from being chosen as a member of the U. P. Legislative Assembly in view of the provisions of section 7(d) of the Representation of the People Act and his nomination paper was wrongly accepted by the Returning Officer. In this case, therefore, the whole election relating to the general and the reserved seats has been materially affected as a result of the improper acceptance of the nomination paper of Sri Tara Chand, Respondent No. 1. Consequently, the entire election relating to both the seats must be declared to be wholly void.

We now come to deal with issues Nos. 8 and 9 which are as follows :—

"8. Are the allegations contained in paras 20 to 26, 27 (ii), (iii), (iv), (ix), (x) and 34 to 36 true, and if so was the result of the election materially affected by such facts or by any one of them ?

9. Are the allegations relating to corrupt and illegal practices contained in paras 27 (ii), (iii), (iv), (ix), (x) true, and if so what is its effect ?"

These issues relate only to the irregularities and corrupt and illegal practices specified in those paragraphs. After our findings on issues 5 and 6 it would be unnecessary for us to deal with these issues, more specially when counsel for the petitioner has not seriously pressed the allegations contained in the said paragraphs. Counsel for the petitioner has only argues upon paragraph 26 (e), (f) and paragraph 27 (ii), (iii), (ix) and (x). In paragraph 26 (e) (f) of the petition, a grievance has been made in regard to the missing of symbols from 238 ballot boxes. If we refer to the statement of the petitioner, we would find that the outer symbols of the ballot boxes were found missing, but the corresponding inner symbols were there inside the boxes, which completely guided the identification of the boxes, and that the ballot papers contained in these ballot boxes were properly dealt with. These paragraphs therefore bear no substance.

Coming now to the alleged irregularities stated in para 27 (ii) and (iii) of the petition, the grievance is that the Presiding Officer of Polling Station Saraiya Mahipat Singh refused to have the ballot boxes sealed by the petitioner's agent at that polling station and that the seals of those boxes which were already sealed by such agents were broken, and Government seal was put instead, and that at the above polling station the serial number of the ballot papers was not given to the agent in spite of demand by the agent, there is the evidence of Ramdat (P. W. 5) who was the polling agent of the petitioner at that polling station. He has stated that with regard to this alleged irregularity, he did not lodge any objection before the Returning Officer at Sitapur. There is no positive proof that this irregularity was committed. On the other hand, if we refer to the evidence of Sri Rameshwar Bux Singh (D. W. 3), who was the Presiding Officer at that Polling Station, we would find that the irregularity alleged by the petitioner was not at all committed there. The grounds stated in para 27 (ii) and (iii) are therefore not proved.

The allegation contained in para 27 (ix) of the petition is to the effect that the Sayar Polling Station was notified for three polling booths, but on the day of polls there were only two booths in the beginning, and the Presiding Officer got the third booth opened after a lapse of sufficient time from the start of the polling and that at the end of the polling hundreds of voters of the petitioner went away without casting their votes because the Polling Officers were left with no time to record their votes being busy due to presence of large number of voters. In support of this allegation, the petitioner has examined Ajaipal Singh (P. W. 3), who acted as his polling agent at the Sayar Polling Station. He stated that the third booth was opened about two hours after the open of the polls. He further stated that about 50 or 100 voters of the third booth left the polling station without casting their votes after 1½ hours of the opening of the polls on the other two booths (an assertion which was not at all made in the petition) and that at the end of the day, there were about 100 or 200 voters on the third booth who could not cast their votes. In cross-examination he said that all those persons who went away in the beginning after having waited for about 1½ hours were voters of Kurar. But he could not name any one of those voters. In cross-examination, he further stated that he could not name any one of those 100 or 200 voters who left the polling station at the end without casting their votes in booth No. 3 and he could not also specify to which villagers they belonged. He admitted that larger number of votes were cast in booth No. 3 than in booth No. 1. There is no evidence to corroborate the testimony of P. W. 3 on this point and his statement is not consistent with the allegations made in paragraph 27 (ix). This allegation cannot therefore be accepted as correct.

Coming now to para 27 (x) of the petition, the petitioner averred that Kursunda was notified to be one of the polling stations in this Constituency, but at the eleventh hour it was changed to Neorajpur on the request of Respondent No. 1, who was the District Congress President of Sitapur because he has influence in that locality and because he intimidated the voters in his favour. This allegation has been traversed by Respondent No. 1. On this question, we have the evidence of three witnesses. Sri Madho Prasad (P. W. 2) stated that one or two days before the actual polling, the petitioner and his workers were informed that the venue of the polling had been changed from Kursunda to Neorajpur and that on account of this last minute change quite a number of voters attended Kursunda on the date of poll. In cross-examination he, however stated that no objection was raised when the place of polling was changed from Kursunda to Neorajpur. His contention was that there was no time to raise an objection to that effect. He further stated that the change of the polling station was made known to the voters by the workers of the candidates who had stood for election. If that was so, it cannot be said that some of the voters went to Kursunda to cast their votes. There is then the evidence of Sri Hanuman Prasad Misra petitioner. He stated that on account of the change of the polling station from Kursunda to Neorajpur, he suffered a loss of about 200 votes. Assuming that that statement is correct and assuming that he would have polled another 200 votes if the change of station had not come about, the addition of these 200 votes would not have affected the result of the election so far as the petitioner was concerned. On the side of the Respondent, Sri A. H. Alvi, who was the Presiding Officer at polling station Neorajpur has been examined. He stated that about seven days before the holding of the election, he had received intimation that he has to preside as Neorajpur polling station. His statement shows that it was not a last minute change as has been contended on behalf of the petitioner. There is further no evidence on the side of the petitioner to prove that the change was effected on the request of Respondent No. 1 in his capacity as District Congress President with a view to influence and intimidate the voters of that locality. The grounds stated in para 27 (x) of the petitioner should therefore fail.

Issue No. 10.—In view of our findings on the foregoing issues our decision is that the election in respect to the general seat to which Sri Tara Chand Respondent No. 1 has been returned and also in respect to the reserved seat to which Sri Baiju Ram Respondent No. 5 has been returned should be declared wholly void. In the circumstances of the present case, we would direct the parties to bear their own costs.

(Sd.) D. N. ROY, *Chairman*,

(Sd.) A. SANYAL, *Member*.

The 6th April, 1953

ORDER BY THE TRIBUNAL

In view of the opinion of the majority of the members of the Tribunal, the Tribunal directs that the election in respect to the general seat to which Sri Tara Chand Respondent No. 1 has been returned and also in respect to the reserved seat to which Sri Baiju Ram Respondent No.

has been returned should be declared wholly void. In the circumstances of the present case, the parties should bear their own costs.

(Sd.) D. N. ROY, *Chairman*.

(Sd.) A. SANYAL, *Member*.

(Sd.) M. U. FARUQI, *Member*.

The 6th April 1953.

ELECTION PETITION NO. 272 OF 1952

Hanuman Parshad Misra—*Petitioner*

Versus

Tara Chand and 18 others—*Respondents*.

JUDGMENT

I had the advantage of perusing the judgement of my learned colleagues, I regret that I do not agree with some of their findings on the main issues so much so that I think it proper to give my findings in a separate judgment.

It was a double member constituency to which the election in question related. One seat was reserved for the scheduled caste and the other was open to all.

As many as twenty persons were nominated out of whom five remained in the field to contest the election. Some of them were for the reserved and some for the general seat. The Returning Officer announced result of the election declaring Tara Chand Respondent No. 1 elected for the general seat and Baiju Rama Respondent No. 5 for the reserved one. Hanuman Parshad, the petitioner who had contested the election, was defeated.

Being dissatisfied with the result of the election, Hanuman Parshad filed the petition challenging the election of Tara Chand alone. The latter contested.

Ten issues were struck from the pleadings of the parties. Issues Nos. 1 to 4 and 7 related to preliminary points and were decided previously. Issues Nos. 5, 6, 8, 9 and 10 remained for decision whereon I am going to record my findings.

Issue No. 5.—This issue was as follows :—

Is the petitioner entitled to the relief claimed by him in view of his plea that the nomination of opposite party No. 1 was wrongly accepted by the Returning Officer and in view of Baiju Rama's election not having been questioned and having become final?

This issue can be split up in two parts. The first part relates to the question as to whether the nomination paper of Tara Chand was improperly accepted by the Returning Officer and if so, whether the result of election was materially affected. The second part of the issue related to the question whether the petition was liable to be dismissed because the election being indivisible no allegations were made and no relief was sought against Baiju Rama elected for the reserved seat.

The first part of the issue can again be split up in two parts—improper acceptance of the nomination paper of Tara Chand and its effect on the result of the election.

Improper Acceptance of Nomination Paper.—Before dealing with this point I may remark that there was some attempt at the time of arguments of side tracking the main point in controversy. While dealing with this question the general principle of confining ourselves to the pleadings of the parties must be kept in view not only because it is a salutary principle which should always be adhered to by every court of law but also because none of the parties should be given an opportunity of setting up a case which the other party was not called upon to meet.

The main allegations are contained in paragraphs 13 to 18 of the petition and answer to these allegations given by the respondent is contained in paragraphs 13 to 18, 41 and 42 of the written statement.

It was alleged that there was a Beopar Mandal (Merchants Association) at Sidhauri, that it was formed by several firms of the town which were its members, that Tara Chand was its President at the time of this nomination, that the Mandal had a contract of supply of food grain to the Government that therefore Tara Chand was disqualified under section 7 (d) of the Representation of Peoples Act, 1951. It was also alleged that Tara Chand had a share in the contract for supply of food grain from Kamalpur Mandi which was entered into between Messrs Sabita Din Ram Parshad and the Government of Uttar Pradesh.

The respondent admitted that there was a loosely knit body called Beopari Mandal at Sidhauri, that firm Lachhmi Narain Chunnai Lal was one of its members, that the said Mandal had an agreement to supply food grain to the Government and that the Mandal agreed with its members to purchase from them food grain and to pay the price thereof when recovered by the Mandal from the Government. He denied all the other allegations made in the petition including the one relating to Kamalpur Mandi. The last mentioned allegation was not pressed from the side of the petitioner at the time of arguments for the simple reason that it could not be substantiated from evidence.

The arguments were exclusively directed to the Mandal affair. It may be noted that the respondent made it clear in his written statement that prior to nomination he had resigned from his Presidentship of the Mandal and that his firm had resigned from the membership of the Mandal.

The points in controversy therefore were:—

1. Did Mandal enter into contract for supply of goods to Government ?
2. Did Tara Chand resign from Presidentship and firm Lachhmi Narain Chunnai Lal from membership of the Mandal prior to nomination ?
3. If so, with what effect ? And if not, with what consequences ?

First point.—The Mandal had its own rather strange story. It came into existence sometime in 1938 for the purpose of protection of the individual firms that were in their individual capacity open to some sort of official excess, it is alleged, during the war days. It was not and is still not a registered body. It had no rules or regulations. Annual or periodical elections of its officials were unknown to the Mandal. The terms of its membership were curious. Only such of the firms were its members in any year as had performed a particular kind of 'puja' in the beginning of the year. A firm which performed the said 'puja' used to become member without any application for membership and without any resolution having been passed by the Mandal. If any member-firm did not perform the said 'puja' in any year, *ipso-facto*, without any resolution of the Mandal it ceased to be member. There was no annual adjustment of accounts. No balance sheet was ever drawn. No accounts were ever made. Such was the condition of the Mandal which in 1946 made an agreement with the Supply Department for the supply of food grain. The procedure adopted was that the member-firms used to supply grain to the Mandal which in turn used to supply the same to the Department concerned. When money was realised from the said Department the Mandal used to pay the price of grain supplied by any member-firm. In fact the member-firms had no concern with any department of the Government whatever dealings they had they had the same with the Mandal. It is not the case of the petitioner that the member-firms had entered into any contract for supply of goods to the Government nor is it proved from evidence that whatever understanding there was between the member-firms and the Mandal it amounted to any contract for supply of goods to the Government. At best it can be said that the firms agreed to supply grain to the Mandal knowing that they later was to supply the same to a Department of the Government. But this knowledge cannot by any means be said to have amounted to a contract. This, however, was not the petitioner's case. His case was that the Mandal had contract of supply of food grain to Government and that Tara Chand had a share or interest in that contract because he was President of the Mandal at the time of nomination and also because he was a member of firm Lachhmi Narain Chunnai Lal which was a member of the Mandal.

The question for decision, therefore, is whether the Mandal entered into the alleged contract. It was argued from the side of the respondent that the Mandal was incapable under the law of entering into contract. Argument of the petitioner's side was that the word 'contract' used in section 7 (d) of the Representation of Peoples Act, 1951 should be given a wider meaning so as to include any agreement. But I do not agree with this argument. There is no ambiguity in the language employed in section 7 (d) of the said Act. There is no justification of all for not giving the word the ordinary plain meaning. This being so, it is to be found whether the Mandal described above was capable of making a contract. My answer is in the negative because neither the Mandal nor its members firms were juristic persons capable of entering into contract. This position was accepted at the time of arguments from the side of the petitioner but it was argued from that side that all the members of different firms individually should under the law be considered as members of the Mandal. But this position was never accepted by any one who had any concern with the Mandal. Even the petitioner described the Mandal as consisting of the firm members. During the long course of about 13 or 14 years of the existence of the Mandal individual, partners of the firm members were never called upon to face the aforesaid position, that the law is said to have conferred upon them. The agreement was entered into between the Supply Department and the Mandal and during the period of six years that Department always treated the agreement as one between that Department and the Mandal and not as one between the said Department and the partners of the different firms which were from time to time members of the Mandal. In fact it was not possible because of the curious and uncertain method of membership of the Mandal. The supply Department, it appears, did not at all bother about the internal constitution of the Mandal. They took a practical view of things. So long as they were getting their supply they had nothing to do with anything else. Therefore the plain facts are

upon by all concerned during the long period of good many years and also admitted by the petitioner in his petition leave no room for importing any meaning to the conduct of the parties concerned other than that which emanates from the admitted and proved facts. Result, therefore is that the Mandal was incapable of entering into a contract with any body. If this was so, obviously section 7 (d) referred to above does not apply even if it be assumed for the sake of argument that Tara Chand was President of the Mandal at the time of his nomination and his firm was member of the Mandal.

Second point.—This brings me to the second point. The above narrative and discussion about the Mandal will show that every link of the story given above makes the thread of 'contract of supply of goods to the Government' thinner and thinner even if all the allegations of the petitioner are considered in the light of evidence and circumstances.

This was the condition of the relations between the Mandal and the supply Department of the Government when elections started. Tara Chand was attempting to get congress ticket. After hectic telegraphing and telephoning with the congress authorities he came to know about the end of third week of November 1951 that he was granted congress ticket. There came the question of his connection with the Mandal and of the latter's connection with the Supply Department of the Government. As date of nomination was near, Tara Chand did every thing possible to sever his connection with the Mandal. He resigned from Presidentship of the Mandal and his firm resigned from membership thereof. In order to be on the safe side a meeting of the Mandal was held in which the two resignations were placed and were accepted. Tara Chand himself took the copy of proceedings of the Mandal to the Regional Food Controller and handed the same to him. The said Officer even upto the present time did not take any exception to the resignation of Tara Chand. Hence it must be assumed that he had no objection and that he accepted the position. As said above, in fact the Department concerned never bothered itself with the internal affairs of the Mandal.

It was argued from the side of the petitioner that all the show of resignation was a camouflage and that every thing was done after nomination but I am not prepared even for a moment to disbelieve the *bona fides* of Tara Chand in this connection. The papers summoned from the office of the Regional Food Controller and his endorsement thereon give a lie direct to this contention. I hold that Tara Chand resigned from Presidentship and his firm from membership of the Mandal before Tara Chand's nomination.

It is not proved what duties Tara Chand was to perform in his capacity as President of the Mandal except that he along with the Secretary used to sign cheques of the Bank. As Tara Chand was granted congress ticket very late he was in a hurry to sever his connection with the Mandal. He did so by tendering the two resignations. Thus he completely disconnected himself with the Mandal. It was, however, not possible to elect another President in such hurry. Time was needed for the same. But the Mandal people felt that it would not be possible to carry on business of the Mandal if money was not withdrawn from the Bank and that could only be done with the signatures of the President on the cheques along with the signatures of the Secretary. The Mandal, therefore, though accepting resignation of Tara Chand unconditionally requested him to sign cheques till his successor was elected. The successor was elected on December 4, 1951. Between his resignation and the election of new President Tara Chand signed some of the cheques for withdrawal of money relating to past dues. It was argued that this amounted to continuance of Presidentship and that therefore it must be held that Tara Chand was President on the date of nomination and was thus disqualified under section 7 (d) of the Act.

The matter is not such in which there should be any room for entering into legal intricacies. The plain and simple facts are that the resignation was unconditionally accepted. It became operative as soon as it was accepted. Mere signing of some of the cheques cannot by any stretch of reasoning, in my opinion, negative the force of resignation and its acceptance by the Mandal. Therefore I decide the second point in the affirmative.

Third point.—In view of the above findings it must be held that Tara Chand was not disqualified under section 7 (d) of the Representation of Peoples Act, 1951 at the time of his nomination.

But if it is assumed that Tara Chand was disqualified at the time of nomination and that his nomination paper was improperly accepted, it must be proved as a fact in order to attract the provisions of section 100 (1) (c) of the aforesaid Act that result of the election was materially affected by improper acceptance of the nomination paper of Tara Chand.

As there was considerable difference of opinion on this point, I shall at first discuss the legal aspect of the matter and then I shall show how far in this case it has or has not been proved that the result of the election was materially affected by the so called improper acceptance of the nomination paper of Tara Chand.

Section 100 of the Act so far as relevant for the present controversy is as follows :—

“ S 100—Grounds for declaring election to be void :

(1) If the Tribunal is of opinion :

(a);

(b);

(c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination the Tribunal shall declare the election to be wholly void.”

Provisions of law in the past were exactly the same as above.

While interpreting these provisions of law the Commissioners deciding the election case in the past drew a distribution distinction between improper acceptance and improper rejection of the nomination paper. In the latter case they held that it should be presumed that the result of election was materially affected and that it was for the respondent to rebut that presumption. But in the former case, i.e., in case of improper acceptance of a nomination paper it was held that the petitioner should prove it as a fact that the result of the election was materially affected before the election could be held void.

I proceed to discuss the chronological order such of the old cases of improper acceptance of nomination paper, as came to my knowledge.

The first case in the Insein case of 1923—P. D. Patel *vs.* Maung Ba Glay and Maung Kayaw Din (reported at page 411 to 417 of Election cases India and Burma by Hammond). Three persons were nominated namely Maung Ba Glay the first respondent who secured 699 votes, P. D. Patel the petitioner who secured 588 votes and Maung Kyaw Din the second respondent who secured 349 votes. The Commissioners held that the nomination paper of the second respondent was improperly accepted. Parties adduced evidence to prove that the result of the election was materially affected by improper acceptance of the nomination paper of the second respondent. Besides other evidence the second respondent himself was produced from the side of the petitioner and he stated that if his nomination had been refused all the votes cast for him would have gone to the petitioner. On the other hand the first respondent produced evidence to show that the votes would have gone to him. The commissioner after weighing evidence of the parties came to the conclusion that the votes of second respondent would have gone to the first respondent. Therefore while dismissing the petition the commissioner held that the result of the election was not materially affected by the improper acceptance of the nomination paper of respondent No. 2. This decision lays down that where nomination paper of a candidate had been improperly accepted, it must be proved that the votes given to this candidate would in fact have been given to petitioner and would in number have given him majority in order to set aside the election.

Another case on the point is C. M. Karola *vs.* B. K. Dalvai and S. N. Angadi reported at page 31 of Jagat Narain's Indian Election Petitions Volume II. In that case the only question for decision was as to whether nomination paper of Mr. Lathe was improperly accepted and if so whether result of election was materially affected. While dealing with the case the commissioners remarked :

“ The commissioners think it desirable to note that, particularly in view of some of the cases cited before them, that the present is not a case of improper refusal of a nomination paper, but its improper acceptance. This distinction between the two cases is obvious, in the one case the whole electorate is deprived of its rights to vote for a candidate who was legally entitled to stand ; in the other all the candidates including a disqualified one are put up for election and every one on the Electoral Roll of the constituency had the opportunity of voting for the candidate or candidates he prefers.”

The Commissioners, then, discussed the facts of the case before them and observed :

“ Under the circumstances the commissioners think that the onus rests very heavily on the petitioner of proving by affirmative evidence that all or a large number of Mr. Lathe's votes would have come to Mr. Chikodi. If the former had not been in field. How has the petitioner attempted to discharge this onus ? The commissioners are of opinion that he has entirely failed to do so.”

There were four candidates for election in that case one of them being Mr. Lathe. The Commissioners held that Mr. Lathe was disqualified and that therefore his nomination was improperly accepted by the Returning Officer. They, however, held that the petitioner entirely failed to prove that the result of the election was materially affected by improper acceptance of the nomination paper of Mr. Lathe.

After drawing distinction between section 13 of the Ballot Act of England and Rule 42 of the Electoral Rules—the latter Rule was the same as section 100 of the Act cited above they remarked that :—

“ The petitioner must satisfy the Tribunal that the result of the election was as a fact materially affected, not merely that it might have been affected.”

Before parting with this case I may remark that the general principles enunciated by the commissioners in the judgment were based not merely on their interpretation of the law on the point but also particularly in view of some of the cases cited before them.

The third case on the point is *Piarey Lal vs. Munshi Amba Pd. of Agra District non-Mohammadan Rural constituency* reported at page 4 of Jagat Narain's Indian Election Petitions Volume IV. There were six candidates for the election which was subject of inquiry in the case under notice. Two of them were Mr. Amba Prasad and Babu Rama. Mr. Amba Prasad objected before the Returning Officer to the nomination of Babu Rama on the ground that his nomination paper was presented after 3 P.M. and was consequently invalid. His objection found favour with the Returning Officer and the nomination paper of Babu Rama was rejected as filed beyond time. The other four candidates withdrew their candidature and Mr. Amba Prasad was declared duly elected.

Thereupon Piarey Lal an elector filed the election petition for a declaration that the election of Munshi Amba Prasad respondent No. 1 be declared void and that Babu Rama respondent No. 2 be declared to have been duly elected on the ground that the nomination paper of Munshi Amba Prasad was improperly presented and that these irregularities and materially affected result of the election. Mr. Amba Prasad contested the election. There were three main issues :—

1. Was nomination paper of Mr. Amba Prasad improperly presented.
2. Was the nomination paper of Babu Rama properly presented ?
3. Was the result of the petition materially affected by wrongful acceptance or non acceptance of any nominations. ?

After discussing the evidence the commissioners found that nomination paper of Munshi Amba Prasad was improperly accepted and that the nomination paper of Babu Rama was improperly rejected. Thus the case was improper acceptance and rejection both.

While giving their findings on issue No. 3, the commissioners made certain remarks which became subject of comment in another case to be presently noticed. They remarked :—

"It is now well settled that when the nomination paper of a candidate has been improperly rejected, the ordinary presumption is that the result of the election has been materially affected. Improper acceptance or refusal of a nomination by the Returning Officer in our view is so grave an irregularity that this presumption would require the strongest and most conclusive proof for its rebuttal and it lies heavily on the Respondent to rebut the presumption so raised. We do not think that correctness of the above proposition is open to doubt, but in support of the general principle "we may refer to the following English and Indian cases".

Then followed citation of four English and three Indian cases.

It appears from the above citation that the commissioners who decided that case bracketed improper acceptance with improper rejection. This is, however, not so. The commissioners had both the issues before them and their finding of fact on both the issues was in favour of the petitioner. But while dealing with the last issues their attention was mainly—and that I would not be wrong if I say exclusively centred on the question of improper rejection. I could not check the English ruling cited by them but the three Indian cases all relate to improper rejection in the beginning of their finding on issue No. 3 they remarked that the judicial opinion on the point was well settled. This also refers to the question of improper rejection. In this view of the matter, I am definite that improper acceptance cannot be bracketed with improper rejection so far as the burden of proof is concerned. I am also definite that the commissioners deciding that case did not in fact intend to lay down any such principle.

This brings me to another case in which the last mentioned two cases were discussed and referred to. That case is *S. Moola Singh vs. Ch. Mangu Rama and others of Hoshiarpur West General Constituency, 1946*. The case was decided on July 5, 1948, and is reported at page 945 of Sen and Poddar's Indian Election cases 1935-51.

In that case *S. Moola Singh*, a scheduled caste candidate, challenged the election of *Ch. Mangu Rama* respondent No. 1 and *Ch. Mehar Chand* respondent No. 2 who were declared elected to the reserved and the unreserved seats respectively, from the aforesaid constituency and further claimed a declaration of election to the reserved seat and in the alternative that the whole election was void.

The election was assailed, *inter alia* on the ground that the first respondent was guilty of corrupt practice of personation and that the nomination paper of the second respondent was improperly accepted as he was below 25 years at the time of nomination and as such was disqualified.

The commissioners found that the nomination paper of *Ch. Mehar Chand* was improperly accepted. Then they proceeded to deal with the question as to whether the result of election was materially affected by the improper acceptance of the aforesaid nomination paper. At the outset

they cited the two cases which I have discussed above. As found by me the case of *Piarey Lal vs. Munshi Amba Parshad* is no authority on the question of burden of proof in case of improper acceptance of the nomination paper. The other case cited by them, *i.e.*, *Karole vs. Dalvai and Angodi* (the Bilgaon case) laid down the very same principle as was the basis of decision of the Insein case referred to above. The commissioners who decided *S. Moola Singh's* case, however, did not agree with the view of either of the two cases. After consideration of the provisions of law they came to the conclusion.

"what is required is that the commissioners must on the the material on the record and the surrounding circumstances come to the conclusion that but for the improper acceptance of the nomination paper of a particular candidate the result in all probability would have been different."

The commissioners then proceeded to apply the above test and observed,

"we have the admissions of respondent No. 1 (Ch. Mangu Rama) in cross-examination that all the votes cast in favour of Ch. Mehar Chand the disqualified candidate, were entirely due to his having been given congress ticket, and that if *S. Moola Singh* had secured the congress ticket the votes cast in favour of Ch. Mehar Chand would have gone to him. Further *S. Mula Singh* had in 1937 elections been given the congress ticket and in all probability, if Ch. Mehar Chand's disqualifications had been known he would have secured the congress nomination for the reserved seat and as such there can be no doubt that the result of the election would have been different."

I have purposely cited the above passage because I shall show while delaying with the case before me that it does not even stand the test given above.

The last case of this category of pre-1951 days that came to my notice is *R.S. Ram Jawaya Kapur vs. R. B. Ganga Saran* and others relating to the Trade Union Labour (North-western Railway Union) constituency 1946 decided on May 30, 1950. (*Vide* Sen and Poddar page 823). In this case the petitioner contested the seat along with the eight respondents, but was beaten by respondent No. 1 by 10 votes, while the other respondents polled very low and did not contest the petition. The petitioner alleged mal-practices on the part of the returned candidate for invalidating his election. He prayed that the election of the respondent be declared void, and he be declared to have been duly elected.

One of the grounds taken up by the petitioner was that the nomination paper of the first respondent was improperly accepted by the Returning Officer. After considering the evidence the commissioners found that technically the nomination paper of respondent No. 1 was improperly accepted. Having recorded this finding they proceeded to consider whether the result of the election was materially affected by improper acceptance of the said nomination paper. While considering this point they remarked :—

"Even if there be some technical flaw in the nomination of the respondent, the petitioner has still to show that this nomination has materially affected the result of the election, and but for this nomination he himself would have succeeded at the polls. If the nomination has been improperly accepted and the electors have exercised their right of franchise, the election cannot be set aside unless it can be proved by the petitioner that the result of the election has been materially affected. In other words, he has further to prove the satisfaction of the court by affirmative evidence that all or majority of the votes given to the candidate, whose nomination was improperly accepted, would have come to him and he would consequently have had a majority over the returned candidate. There is a difference of proof in the case of an improper acceptance and an improper rejection of a nomination paper. In the latter case the whole electorate is deprived of its right to vote for a candidate who was entitled to stand, whereas in the former case all the candidates even the disqualified one, are put up for election and every one on the electoral roll has had an opportunity of voting for the candidate or candidates he prefers. Therefore, in the case of improper rejection of a nomination the court may presume that the result of the election has been materially affected and may void the election. But in the case of an improper acceptance the petitioner must prove by affirmative evidence that the result has been materially affected".

After laying down the above principle the commissioners pointed out that,

"on this point the petitioner has not led any evidence at all. There is not an iota of evidence to show that the result of the election would have been materially affected in his favour had the respondent's nomination been thrown out by the Returning Officer".

The cases cited above all relate to improper acceptance. But in numerous cases of improper rejection of nomination paper the same distinction has been drawn. Some of such cases taken from Sen and Poddar are :

Basti N-E case p. 106 at 110

Batala Silkh case p. 122 at 127.

Buzzar M. R. case page 716.

Moreover the principle enunciated above applies to all cases of irregularities which cannot be ground of avoidance of election unless it was proved that the result of election was materially affected by the irregularity. In all such cases it has been repeatedly held that it is for the petitioner to prove by positive evidence that result of election was materially affected.

There are good many books and commentaries on the law of election in our country written by eminent lawyers and jurists whose opinions have been cited with approval by different election courts. There is consensus of opinion among them on the point that in case of improper acceptance of a nomination paper the election cannot be set aside unless the petitioner proves positively that the result of election was materially affected by improper acceptance of the nomination paper. I may refer to Jagat Narain's Law of Elections and Election petitions page 323, Sarin and Pandits' Indian Election Law page 434 and Nanak Chand Pandit's Law of Elections and Election Petitions page 415.

Having shown that there was preponderance of authority in support of the principle enunciated above, I proceed to find whether the petitioner has proved that the result of election was materially affected by the alleged improper acceptance of the nomination paper of Tara Chand. There is not a word in the evidence adduced from the side of petitioner nor is there anything in cross examination of the respondents evidence which may throw any light on this point. Mere speculation that the votes cast in favour of the respondent might have gone to the petitioner if the respondent had not been in the field cannot do. There should have been positive evidence on the point from the side of petitioner. In the absence of complete absence of evidence it is impossible under the law to hold that the result of election was materially affected and therefore the election should be avoided.

It appears from paper Ex. A2 that there were five candidates in the field, namely,

Tara Chand Respondent No. 1 who secured 26275 votes.
Hanuman Parshad petitioner who secured 8973 votes.
Lallu Ram Respondent No. 9 who secured 11938 votes.
Baiju Ram Respondent No. 5 who secured 25133 votes.
Raghu Ram Respondent No. 7 who secured 8002 votes.

There is no evidence to prove that if Tara Chand had not been in the field the votes cast for him or substantial part thereof would have gone to Hanuman Parshad.

There is not an iota of evidence on this point on the record.

Even if the test given in the case of S Mula Singh cited above be applied and probabilities and circumstances of the case be taken into consideration no result favourable to the petitioner can be achieved. In that case there were probabilities and circumstances based on positive evidence on the basis of which the commissioners found that in all probability the votes of the successful candidate whose nomination paper was improperly accepted would have gone to the petitioner. But in this case there does not exist any evidence at all on which any probabilities or circumstances can be based. To assume that Tara Chand's votes might have gone to the petitioner would be mere speculation and surmise on which a finding which should follow from positive evidence under the law cannot under any circumstances be based.

Therefore in view of what is said above I definitely find that it has not been proved that the result of the election was materially affected by the so-called improper acceptance of the nomination paper of Tara Chand. I hold that the petitioner is not entitled to the relief claimed by him or to any other relief in view of his plea that the nomination of the respondent No. 1 was wrongly accepted by the Returning Officer.

The second part of issue No. 5 raises another important question. While dealing with this part of the case I would again emphasise that the consideration of the case must be confined to the pleadings of the parties. A perusal of the petition leaves no room for doubt that the petitioner questioned only the election of Tara Chand on various grounds. It is also clear that his only attempt was to oust Tara Chand and himself to replace him. This is apparent from the fact that no allegation has been made in the whole of the petition against the election of Baiju Rama from the reserved seat. It was argued that no allegation against Baiju Rama was possible because his election was free from any illegality or irregularity. This reasoning, however, does not hold water because the election of the two of Tara Chand and of Baiju Rama—being indivisible the petitioner should have alleged in the petition that because the election of Tara Chand was void the election of Baiju Rama should also be held void. In the absence of any such allegation against Baiju Rama the latter kept quiet and did not put in appearance. He was, under the circumstances, justified in keeping himself away. The inference that the petitioner never thought of challenging the whole election including that of Baiju Rama is further confirmed from the prayers made by the petitioner at the end of the petition.

Under section 100 of the Act the whole election is to be declared void if it was proved that the nomination paper was improperly accepted and that the result of election was materially affected by the improper acceptance of the nomination paper. If the petitioner had intended challenging the whole election including that of Baiju Rama he would have made a prayer that the whole election

should be set aside. This prayer is, however, not made in the petition. It is thus clear that allegations made in the petition show it beyond any shadow of doubt that petitioner's only intention in filing the petition was to get the election of Tara Chand alone set aside and also to get a declaration that he himself was elected in his place. This was an impossible stand that was taken by the petitioner and manifestly the petition was a misconceived one. I cannot reconcile myself to the idea of proceedings beyond the pleading and of permitting the petitioner to set up a case at the time of arguments which was fundamentally different from the one set up in clear and unambiguous terms in the petition.

The petition must be, in my judgment, thrown out on the ground that the petitioner does not challenge election of Baiju Rama, that he does not claim a relief against him, and that he does not pray for the avoidance of the whole election.

During the course of arguments when the petitioner's learned counsel was asked as to why no allegation was made against Baiju Rama and no relief claimed against him, he answered that though no relief was claimed against Baiju Rama, in paragraph 12 of the petition the whole election was challenged. That paragraph runs as follows :—

"That the wrongful inclusion of the name of opposite party No. 1 in the list of validly nominated candidates has materially affected the result of the election".

It was argued that "the election" at the end of the paragraph meant the whole election including that of Baiju Rama. This is without doubt a forced argument. Words "the election" were certainly not used to mean the whole election including that of Baiju Rama. A perusal of the whole petition will without doubt show that the petitioner never meant to challenge his election.

Therefore in view of what is said above, it is clear that, to grant a relief of avoidance of election, would be going beyond the pleadings for which there is complete absence of justification under the law.

This is true that under section 98 of the Act the Tribunal is empowered to make order on any one of the four points mentioned therein including the order declaring the election to be wholly void but such an order must emanate from the pleadings supported by evidence. In this case, as pointed out above, if we confine ourselves to the pleadings, it would be found that the petition is totally silent about the election of Baiju Rama and the evidence is wholly wanting in respect of that matter.

Any order on the points specified in section 98 can no doubt be made by the Tribunal but the section does not by any stretch of reasoning contemplate that the Tribunal may pass orders which do not emanate from pleadings and which confer on the petitioner an unclaimed and undeserved advantage to the detriment of the right and interest of the Respondents particularly of Baiju Rama against whom no allegation is made and no relief is sought by the petitioner.

Therefore my finding on the second part of issue No. 5 is that the petitioner is not entitled to the relief claimed or to any relief in view of the fact that he did not challenge the election of Baiju Rama which became final and that the election in question being indivisible even the election of Tara Chand cannot be avoided.

To sum up—

It is well known principle of the election law in India and also in Great Britain that the elections should not be set aside on flimsy grounds. The reason is obvious. Elections are conducted at enormous costs and have to be carried out at different polling stations spread out at different places. Much of public time and money is spent in carrying out the elections. The law has, therefore, created clogs and hinderances. It does not contemplate the setting aside of elections on flimsy grounds. To check this it is provided that the irregularities in the conduct of elections and improper acceptance or rejection of nomination papers would not invalidate an election unless it is proved that the result of the same was materially affected thereby.

The election courts also have always been reluctant to set aside an election unless and until it was fully established from evidence that the result of election was materially affected by any irregularities or by improper acceptance or rejection of the nomination paper. I have shown above that it is always to be proved by positive evidence burden of which initially always lay on the petitioner.

In this case the petitioner could not prove that Tara Chand had on the material dates an interest in any contract for supply of goods to the Government. I have also held that even if it be granted that Tara Chand had any such interest the same was purely of technical and flimsy nature which should not result in invoking the provisions of section 7(d) of the Act. I have lastly held that even if it be granted that Tara Chand is hit by section 7(d), the petitioner has miserably failed to establish by positive evidence—in fact he did not give any evidence at all—that the result of the election was materially affected by improper acceptance of nomination paper of Tara Chand.

I have also held that the election of Tara Chand and Baiju Rama being indivisible the petitioner should have challenged latter's election as well and should have sought relief against him

also. As this was not done, the petitioner was entirely precluded from getting the relief of avoidance of election.

Issue No. 5 is decided accordingly.

Issue No. 6.—In view of my findings on the first part of issue No. 5, this issue is decided in the negative.

Issues Nos. 8 and 9.—I agree with the findings of my learned colleagues in respect of these issues. Hence I need not discuss the reasons. These issues are decided against the petitioner and for the respondent.

Issue No. 10.—In view of my findings recorded above, I find that the petitioner is not entitled to any relief.

Therefore I would dismiss the petition with costs.

(Sd.) M. U. FARUQI, *Member*.

The 6th April, 1953.

Election Tribunal, Faizabad.

ANNEXURE A

BEFORE THE ELECTION TRIBUNAL AT FAIZABAD

PRESENT : Sri D. N. Roy—*Chairman*.
Sri A. Sanyal—*Member*.
Sri M. U. Faruqi—*Member*.

ELECTION PETITION NO. 272 OF 1952.

Sri Hanuman Prasad Misra—*Petitioner*.

Versus

- | | |
|---------------------------|--|
| 1. Sri Tara Chand | 11. Sri Sahdeo Ram |
| 2. Sri Ayodhya | 12. Sri Sheo Kumar Singh |
| 3. Sri Kundan Lal | 13. Sri Prahlad Singh |
| 4. Sri Nand Kishore | 14. Sm. Udhma Devi |
| 5. Sri Baiju Rama | 15. Sri Kamleshwar Dayal |
| 6. Sri Madho Prasad Misra | 16. Sri Iftikhar Alam |
| 7. Sri Ragho Ram | 17. Sri Ramadhin |
| 8. Sri Lalta Prasad | 18. Sri Siddh Prasaad |
| 9. Sri Lallu Ram | 19. Sri Suraj Bali— <i>Respondents</i> . |
| 10. Sri Vidya Swarup | |

ORDER

This is an election petition filed by Sri Hanuman Prasad Misra, who was one of the duly nominated candidate for election to the Legislative Assembly of Uttar Pradesh from Sidhauri West Constituency for the general election held in 1951-52 to get the election of the successful candidate Sri Tara Chand respondent No. 1 declared null and void and to get it declared that the petitioner was duly elected.

The respondents were duly served ; but only respondent No. 1 Sri Tara Chand and respondent No. 7 Sri Raghoram have entered appearance and have filed their written statements. Ten issues were settled in the case on the 13th of December 1952, of which preliminary issues Nos. 1 to 4 and 7, which are as follows, have been heard :—

1. Is the petition liable to be rejected for want of proper verification ?
2. Is the petition liable to be rejected for non-compliance with the provisions of sections 83 (2) and 117 of the Representation of People Act 1951 ?
3. Are the allegations of corrupt and illegal practices in paras 27 to 33 vague and indefinite and should not be entertained for that reason ?
4. Can the allegations of corrupt and illegal practices in paras 27 to 33 be entertained in the absence of a list of such practices and in the absence of proper verification of such list as required by section 83(2) of the Act ?
5. Was the nomination paper of the respondent No. 1 invalid for the alleged reason that he had not appointed any election agent as contemplated by section 40 of the Act ?

We shall take up issue No. 7 before we proceed to consider the other issues formulated above. We have looked into the nomination paper of respondent No. 1 that was delivered to the Returning Officer in the prescribed form as required by section 33 of the Representation of People Act 1951, and we are clearly of opinion that no invalidity attaches to the nomination paper. The nomination paper has been assailed on the ground that respondent No. 1 had not appointed any election agent previous to the filing of the nomination paper as contemplated by section 40 of the Representation of People Act 1951. That section lays down that every person nominated as a candidate at an election shall before the delivery of his nomination paper under sub-section (1) of section 33 or under that sub-section read with sub-section (4) of section 39, as the case may be, appoint in writing either himself or some one other person to be his election agent. Sub-section (2) of section 40 lays down that when a candidate appoints some person other than himself to be his election agent, he shall obtain in writing the acceptance by such person of the office of such election agent. Section 33 (3) of the Representation of the People Act 1951 says that every nomination paper delivered under sub-section (1) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed as his election agent for the election either himself or another person who is not disqualified under this Act for the appointment and who shall be named in the declaration, and by such other declaration, if any, as may be prescribed; and no candidate shall be deemed to be duly nominated unless such declaration is, or all such declarations are, delivered along with the nomination paper. In the present case, the nomination paper was in the prescribed form *vide* Rule 4 and Schedule II of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951]. It also contained the declaration by which respondent No. 1 stated that he appointed himself as his election agent and such declaration was signed by him. What is contended on behalf of the petitioner is that a declaration alone was not sufficient and that another letter should have "accompanied" the nomination paper appointing himself as his election agent in order that it should have been a sufficient compliance with section 33(3) and Section 40 of the Representation of the People Act 1951. We have looked into the provisions of sections 33 and 40, and of the rules aforesaid and we are clearly of opinion that the contention of the petitioner on this point is not at all sound. The Representation of the People Act 1951 prescribes the form of nomination paper (*vide* Rule 4 and Schedule II of the Act). The addition of Rule 11-A and Form 5-A of the Rules confirms us in our view that no change was effected in the form prescribed by Rule 4 and Schedule II of the Rules, which would cover the present case. Rule 4 says that every nomination paper shall be completed in the form specified in Schedule II. Schedule II is what is called the "nomination paper". It is a comprehensive document containing 16 heads, specifying the name of the constituency, the name of the candidate, the name of the proposer, the name of the seconder and their signatures, and certain other particulars, followed by a declaration by the candidate that he agrees to that nomination, further followed by an "appointment of an election agent" by which the candidate has to declare that he has appointed either himself or someone else to be his election agent. Rule 11-A of the Rules lays down that when a candidate appoints in the manner provided by section 40, some person other than himself to be his election agent, such appointment shall be in form 5-A. If we look to Form 5-A, we would find that it is a Form for appointing an election agent someone other than the candidate himself. The Form 5-A also prescribes that the person other than the candidate, if appointed as election agent, has to give his acceptance in writing of his appointment as such and he has to sign such acceptance. Obviously, therefore, no separate form has been prescribed for appointing the candidate himself as his election agent other than the declaration contained on the form of the nomination paper itself. Such a declaration is a declaration as prescribed by section 33(3) of the Representation of the People Act 1951. It is not necessary that the declaration should be contained on a separate sheet of paper in order to fulfil the meaning of the word "accompanied" contained in section 33(3). In the present case, the nomination paper that was delivered under sub-section (1) of section 33 was accompanied by a declaration in writing subscribed by the candidate that the candidate had appointed himself as his election agent for the election. Consequently, there was no breach of any provision of the Act or of the Rules; and it cannot for a moment be contended that the nomination paper of respondent No. 1 was invalid for the alleged reason that he had not appointed any election agent previous to the filing of his nomination paper as contemplated by section 40 of the Act. This ground of objection bears no substance whatsoever and must be completely repelled.

We would now come to deal with issue No. 1, which is to the effect as to whether the petition is liable to be rejected for want of proper verification. The petition of Sri Hanuman Prasad Misra is verified in the following terms :—

"That I, Hanuman Prasad Misra, do hereby verify that the contents of paragraphs 1 to 9 above are true to the best of my knowledge and belief, paras 11 to 37 are true on information received, and I affix my signature this 16th day of May 1952 at 11-30 hours.

HANUMAN PRASAD MISRA

It has been contended on behalf of respondent No. 1 that the verification is not a proper verification. It has been argued that paragraphs 1 to 9 of the petition, which contained matters which are admitted by the respondent, have been verified by the petitioner as true to the best of his knowledge and belief; but since the controversial matters which are contained in paras 11 to 37 have been verified as "true on information received", and since the petitioner has not stated in that

verification that "he believes that information to be true", it is a clear evasion of Order VI Rule 15 of the Code of Civil Procedure. It has further been argued that the place of verification has also not been mentioned, which is another defect in the verification. It is no doubt true that the place of verification has not been given in the verification clause; but that by itself is not such a defect as to entail the total rejection of the petition. It is a trivial matter which cannot in our opinion affect the whole of the verification. We are also of opinion that it was not necessary for the petitioner to add in the verification clause after the words; "That I, Hanuman Prasad Misra do hereby verify that the contents of para 11 to 37 are true on information received," the words "which I verily believe to be true." The dictionary meaning of the word "verify" is "to make out or show to be true," or "to confirm the truth or authenticity of." If we bear in mind this dictionary meaning of the word "verify", the verification contained at the foot of the petition would mean that the contents of paragraphs 11 to 37 were verified by the petitioner as true on information received, which the petitioner believed to be true. In *Rajit Ram and others Vs. Katesar Nath and others* (I. L. R. Vol. XVIII ALLAHABAD page 396), a Full Bench of the Allahabad High Court in considering the verification of the plaint which was in the following terms, namely; the contents of the petition of plaint are true to the best of my knowledge and belief", held that this form of verification though not free from ambiguity was in substantial compliance with the provisions of section 52 of the Code of Civil Procedure. In our opinion therefore the verification of the present petition substantially complies with the provisions of the Code of Civil Procedure and the petition cannot be rejected on the ground that it is not properly verified.

We would now take up issues Nos. 2 to 4 for consideration. These issues contain the question as to whether the allegations of corrupt and illegal practices in paragraphs 27 to 33 of the petition are vague and indefinite and should not be entertained for that reason, and also in the absence of a list of such practices and proper verification thereof as required by section 83(2) of the Representation of the People Act 1951, and also for non-compliance of section 117 of that Act. Section 117 lays down that the petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of Rs. 1,000 has been made out by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition. In the present case, the deposit that has been made with the petition and has been accepted by the Secretary to the Election Commission was a sufficient compliance within the meaning of section 117 of the Act. Consequently, it cannot be suggested that the petition should be rejected because of non-compliance of that section.

Para. 27 of the petition enumerates certain irregularities which are alleged to have occurred at the time of counting and on the date of polling. Except sub-clause (ii), (iii), (iv), (ix) and (x) of that para. all the other sub-sections are absolutely vague and indefinite and wanting in particulars. Paragraphs 28, 29, 30, 31, 32 and 33 of the petition are also supremely vague and indefinite. Section 83 of the Representation of the People Act 1951 has made the law relating to the "particulars" much more stringent in India than it is in England. A petitioner is obliged to disclose his case at the very earliest opportunity. This undoubtedly is a salutary provision and gives effect to the opinion expressed by Bruce J., as far back as 1895 in the Lancaster case (5 O'M and H. 41, 42). He said: "He should much prefer to see in a petition, instead of general allegation of corrupt and illegal practices, separate paragraphs setting out the character of the offences charged against the respondent so that he (the respondent) may be informed from the first of the general character and nature of the charge preferred against him." It may be noted that under section 83 sub-section (2) of the Representation of the People Act 1951, the petitioner has to set forth the full particulars of any corrupt or illegal practices which he alleges; and it is further with reference to name, place or date that his statement should be as full as possible. The petitioner cannot plead that at the time of his presenting his petition it was impossible to get any particulars at all; for, if such a plea were to be allowed, then the whole object of the Act would be frustrated. It follows, therefore, that if particulars are not given, those paragraphs in the petition which deal with corrupt or illegal practices or with illegalities should be struck off. In the *Bulan-Shahar Case*, reported at page 219 of *Hammond's Election Cases in India and Burma, 1920-1935*, it was urged that the words "particulars" was restricted to "corrupt practices" and the fact alleged in two of the paragraphs of the petition were mere "irregularities". The Commissioners observed that they were not prepared to dispense with the concise statement of the material facts required by the rule, and they were not in a position to accept the two paragraphs as they contained no statement of facts whatsoever. The Commissioners accordingly directed that the two paragraphs which were vague and indefinite be struck off. We would prefer to follow the same principle and we would proceed to examine which of the allegations in paragraphs 27 to 33 are vague and indefinite so as to merit expunction. Paragraph 27 of the petition as we have already said enumerates certain irregularities alleged to have occurred at the time of the counting and on the date of polling. Sub-clauses (i) (a), (b) and (c) and sub-clauses (v), (vi) (vii) (viii) and (xi) of that paragraph, as also the averments in paragraphs 28, 29, 30, 31, 32 and 33 have been closely examined by us along with the learned counsel for the parties and we are clearly of opinion that these paragraphs are entirely vague and indefinite. They must be expunged. As regards paragraphs 27(ii), (iii), (iv), (ix) and (x), the particulars are given to a certain extent and investigation about these allegations may be made on the question as to whether they, if found true, materially affected the result of the election or not. These paragraphs would therefore be allowed to stand. We would therefore hold that the allegations of corrupt and illegal practices and irregularities

n paragraphs 27 to 33 to the extent indicated above are vague and indefinite and should not be entertained that these paragraphs should be expunged to the extent indicated above. We would further hold that the petition is not liable to be rejected for non-compliance with any provisions of section 83(2) and 117 of the Representation of the People Act, 1951. We would decline to enter into the question as to whether the allegations of corrupt and illegal practices in paras. 27 to 33 can be entertained in the absence of a list of such practices and in the absence of proper verification of such police, because we have already held that the allegations contained in these paragraphs are vague and indefinite to the extent indicated above and should not be entertained.

In the result, we direct that paragraphs 27(i), (a), (b), (c), (v), (vi), (vii), (viii), (xi) and paragraphs 28, 29, 30, 31, 32 and 33 of the election petition dated the 16th of May 1952 be struck off.

(Sd.) D. N. ROY, *Chairman*.

(Sd.) A. SANYAL—*Member*.

(Sd.) M. U. FARUQI—*Member*.

The 17th January, 1953

In view of our findings on issues Nos. 1 to 4 and 7, the issues framed are amended as follows :—

"8. Are the allegations contained in paras. 20 to 26, 27(ii), (iii), (iv), (ix), (x) and 34 to 36 true and if so was the result of the election materially affected by such facts or by any of them ?

9. Are the allegations relating to corrupt and illegal practices contained in para. 27(ii), (iii), (iv), (ix), (x) true and if so what is its effect ?"

The 24th January, 1953

(Sd.) D. N. ROY, *Chairman*.

[No. 19/272/52-Elec. III/4757.]

P. R. KRISHNAMURTHY, *Assistant Secy.*

